

MINUTES OF THE NEENAH BOARD OF APPEALS

June 13, 2023

4:00 P.M.

Members Present: Chairperson Denise Burkett; Gail Dolan; Peter Allen, Jim Hemes and Ken Bonkoski.

Also Present: City Attorney David Rashid; Community Development Director, Chris Haese; Community Development Deputy Director, Brad Schmidt; Community Development Specialist Samantha Jefferson; Attorney on behalf of the applicant Travis Schreurs (Menn Law Firm, Ltd, 480 Pilgrim Way, Green Bay, WI 54313).

Roll Call and Declaration of Quorum: Chairperson Burkett called the meeting to order at 4:02 p.m. and indicated a quorum of the Board was in attendance. Chairperson Burkett proceeded to read the Announcement of Proceedings for the Board of Appeals meeting and swore in the members of the Board.

Approval of Minutes: MSC Bonkoski/Allen, the Board approved the minutes of the November 8, 2021 meeting. All voting aye.

1. Appeal from Lamar Central Outdoor, LLC, regarding the decision of the City to deny a sign permit for the maintenance and repair of an off-premises (billboard) sign located at 2405 Schultz Drive.

Chairman Burkett turned the floor over to Attorney David Rashid.

Attorney Rashid explained to the Board that while he was not part of the hearing itself, he clarified that this matter came to the Board first in November 2021 with same applicant involving a different sign on North Green Bay Road. This case involves a sign on city property in the industrial park. These signs were applied for at the same time with the previously discussed sign having been denied. The city was under the impression that the sign that is being discussed today was also denied at that time, but no formal denial letter was provided at that time stating this. Following Director Haese's deposition in another litigated matter the failure to have relayed the denial formally was revealed.

Chairman Burkett turned the floor over to Attorney Travis Sheers, Attorney for Lamar. He explained that he spoke with the Board about the previous Lamar sign case. He went on to say that Lamar's application for a sign permit was submitted on August 13th of 2021. The application was similar to that for the other sign in that Lamar wished to replace the existing I beams which are the structural component of the sign. They did not receive any response until a letter was received at the end of March or beginning of April of this year. He further claimed that this delay impacted Lamar financially. For this reason, they are asking the Board to overturn the decision of the city and grant the sign application. He clarified the application probably mirrors directly the permit involving the other sign and that during the last hearing, Lamar's attorneys and the Board got into the discussion of the various ordinances and why Lamar felt that we were able to replace those signs based upon maintaining the sign and keeping it in a safe condition. The city had a different position on that and believed it to be a non-conforming sign. The rational basis for the appeal is the delay in denial/approval.

Member Dolan questioned Attorney Sheers on why, if the sign permits were applied for at the same time, the lack of approval or denial was not brought up amongst the previous situation. Attorney Sheers responded that they did not bring it up because they had received nothing at that point. Member Allen

questioned the argument that Lamar suffered financially, then, because he would have expected Lamar would reach out to the city if they had a dire issue.

Chairman Burkett asked if the city is required to respond in a certain amount of time. She proceeded to swear in Director Chris Haese.

Director Haese responded that the city tries to respond in a timely fashion. He further explained that there were several phone calls, nothing that he believes there is record of between him and an individual from Lamar. The person that Director Haese communicated with was Renee St. Laurent from Lamar. There was follow-up email correspondence asking for clarification of the sections of the ordinance that were provided in the phone conversation. There was an email string that began with reference to both permits. The last response seemed to refer to “a sign” as opposed to “signs” so he believes. Although, in that correspondence, at least a sign was referenced that we can issue a permit because of the non conforming status. When we became aware of as attorney Rashid mentioned we followed up with a formal denial and that was several weeks ago to avoid any misunderstanding about the denial.

Chairman Burkett turned the floor to Deputy Director Brad Schmidt to explain the rationale for the declination of the sign permit.

Deputy Director Schmidt began by drawing the Boards attention to the original sign permit application that was sent to the city from Lamar. It detailed the work that Lamar intended to do on the sign. He explained that when reviewing a sign permit application, the city looks at the definition of a billboard sign in the code and it refers to billboards as off premises signs. That definition was included in the memo in the meeting agenda packet. Municipal code Chapter 24, Article V, it talks about prohibited signs in the city. All off-premises signs are prohibited. However, existing off premises or billboards in the city are grandfathered. Chapter 24 talks about non-conforming signs that can continue to exist. There are five different factors or standards. Number one, the sign cannot be structurally altered in any way except for normal maintenance and repair. Subsection five goes on the define normal maintenance or repair is limited to painting and replacement of non-supporting members such as the facing material or cross bracing, individual support poles or members which are structurally damaged by cause may not be replaced. Furthermore, when more than 50% of the support posts are damaged, at any one time, the sign will be deemed non-repairable and must be removed. In reviewing this sign permit application and looking at the code section of the non-conformity signs, the city used that to determine that this sign application should be denied specifically because of the supporting elements of the site being replaced or repaired, which was against the code section. This property was annexed into the city in 2019 – when the sign was placed, the parcel was a Town of Neenah parcel. It is currently on city-owned property.

Attorney Sheers asked Director Haese if during the deposition, he indicated that it’s typical for the city to respond to an application for a sign permit within a week, if not sooner. Director Haese responded that that that sounded reasonable and correct.

The Board determined that their role was to decide on whether to overturn or uphold the city’s decision based on application of city ordinance. The part of the case involving the length of time for the city to formally deny the application was not something that would affect their role.

Chairman Burkett explained the three variance standards that an applicant must show 1) unnecessary hardship where in the absence of a variance results in no feasible use of the property 2) there is a unique property situation and 3) protection of the public interest is needed.

Member Allen asked Attorney Sheers if there was anything materially different than the previous sign case that he would like to show. Attorney Sheers said he did not besides the length of time between the application and formal denial. On that basis, Member Allen said it would be prudent for the Board to follow past decisions. Attorney Sheers said in the previous case, they argued that Lamar was simply maintaining the sign and that Section 24.83 would allow this. He said that their stance is that there are conflicting ordinances in the sign code. The Board discussed this and determined that they did not believe there were conflicting ordinances considering maintenance is defined in the code.

Attorney Rashid said that potentially a connection could be made between the length of time between the application and the formal denial and a hardship. However, the applicant has the burden to show the hardship. Lamar did not reach out to determine the status of the permit application.

On a motion by Dolan; seconded by Allen, the Board of Appeals moves to reverse the Community Development Department's Determination that the sign permit for the maintenance and repair of the off-premise sign located at 2405 Schultz Drive be denied. Dolan, Bonkoski, Allen, Hemes and Burkett voting No. Motion failed.

2. Election of Chair and Vice Chair.

Chairman Burkett accepted the nomination to remain as chair.

On a motion by Bonkoski; seconded by Allen, the Board of Appeals moves that Member Dolan be elected Vice Chairman. Dolan, Bonkoski, Allen, Hemes and Burkett voting aye. Motion carried.

Chairman Burkett explained the role of the Chairman and Vice Chairman.

Further Discussion: Attorney Rashid provided information about the current court litigation regarding the previously discussed sign (North Green Bay Road). Lamar is claiming that there was an insufficient basis upon which the decision was made to uphold the city's decision to deny the sign application permit. The recording of the meeting was defective and the previous City Attorney was not at the meeting. Attorney Rashid asked that Chairman Burkett review the information and confirm with him if anything should change. Chairman Burkett explained that cases should not be discussed outside of the meetings.

Deputy Director Schmidt welcomed new members Peter Allen and Jim Hemes.

Adjournment:

The Board of Appeals adjourned its meeting at 4:45 P.M. **MSC Bonkoski/Allen. All Aye.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samantha Jefferson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Samantha Jefferson, Community Development Specialist, Community Development